

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 81, "Nursing Facilities," Iowa Administrative Code.

This amendment allows nursing facilities to collect additional payment above the Medicaid payment from residents and families who desire a private room. Current rules do not allow supplementation of the rate for a private room. Iowa Code section 249A.4(10) makes this allowable when certain conditions are met.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 0590C** on February 6, 2013.

The Department received one response on this amendment. The respondent asked that the 80 percent occupancy rule in this amendment be removed. This provision penalizes small, rural facilities that may have fluctuations in their occupancy rates due to the challenging and changing demographics of rural Iowa. It discriminates against rural nursing facility Medicaid-eligible residents wanting a private room and loved ones willing to pay the supplementation.

The Department's response is that this amendment is being adopted to implement Senate File 2160, which was passed by the Iowa Legislature in 2012. The intent of the legislative language was to specify that supplementation could not be required when the nursing facility already had so many vacancies that the member would have a private room anyway. The Department received communication from nursing facility industry groups that early drafts of the proposed language would have made it virtually impossible for a facility to ever allow supplementation for a private room. As such, the bill language was revised to require an 80 percent occupancy rate, with the rationale that this would allow facilities to supplement Medicaid payment for private rooms, but would not unduly require additional payment for residents who would otherwise have a private room without supplementation.

The Department cannot omit this requirement from the amendment without legislative direction because the legislation specifically requires an occupancy rate of 80 percent for a facility to supplement for a private room.

No changes were made to this amendment based on the comment. This amendment is identical to the one published under Notice of Intended Action.

The Council on Human Services adopted this amendment on April 10, 2013.

Specific waivers are not provided because the Department has an established procedure for considering exceptions to policy. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

After analysis and review of this rule making, no impact on jobs has been found.

This amendment is intended to implement Iowa Code section 249A.4.

This amendment will become effective July 1, 2013.

The following amendment is adopted.

Adopt the following new subparagraph **81.10(5)"e"(4)**:

(4) Supplementation for provision of a private room not otherwise covered under the medical assistance program, subject to the following conditions, requirements, and limitations:

1. Supplementation for provision of a private room is not permitted for any time period during which the private room is therapeutically required pursuant to 42 CFR § 483.10(c)(8)(ii).
2. Supplementation for provision of a private room is not permitted for a calendar month if no room other than the private room was available as of the first day of the month or as of the resident's subsequent initial occupation of the private room.
3. Supplementation for provision of a private room is not permitted for a calendar month if the facility's occupancy rate was less than 80 percent as of the first day of the month or as of the resident's subsequent initial occupation of the private room.

4. Supplementation for provision of a private room is not permitted if the nursing facility only provides one type of room or all private rooms.

5. If a nursing facility provides for supplementation for provision of a private room, the facility may base the supplementation amount on the difference between the amount paid for a room covered under the medical assistance program and the private-pay rate for the private room identified for supplementation. However, the total payment for the private room from all sources for a calendar month shall not be greater than the aggregate average private room rate during that month for the type of rooms covered under the medical assistance program for which the resident would be eligible.

6. If a nursing facility provides for supplementation for provision of a private room, the facility shall inform all residents, prospective residents, and their legal representatives of the following:

- That if the resident desires a private room, the resident or resident's family may provide supplementation by directly paying the facility the amount of supplementation;
- The nursing facility's policy if a resident residing in a private room converts from private pay to payment under the medical assistance program but the resident or resident's family is not willing or able to pay supplementation for the private room;
- The private rooms for which supplementation is available, including a description and identification of such rooms; and
- The process for an individual to take legal responsibility for providing supplementation, including identification of the individual and the extent of the legal responsibility.

7. For a resident for whom the nursing facility receives supplementation, the nursing facility shall indicate in the resident's record all of the following:

- A description and identification of the private room for which the nursing facility is receiving supplementation;
- The identity of the individual making the supplemental payments;
- The private-pay charge for the private room for which the nursing facility is receiving supplementation; and
- The total charge to the resident for the private room for which the nursing facility is receiving supplementation, the portion of the total charge reimbursed under the medical assistance program, and the portion of the total charge reimbursed through supplementation.

8. Supplementation pursuant to this subparagraph shall not be required as a precondition of admission, expedited admission, or continued stay in a facility.

9. The nursing facility shall ensure that all appropriate care is provided to all residents notwithstanding the applicability or availability of supplementation.

10. A private room for which supplementation is required shall be retained for the resident consistent with bed-hold policies.

[Filed 4/10/13, effective 7/1/13]

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/1/13.